THE HONOURABLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION NO.25078 OF 2004

BETWEEN:

V.Reddy Sailaja D/o Adiseshaiah

…Petitioner

vs.

The Principal Secretary to Govt., Women and Child Welfare Department, Secretariate, Hyderabad and four others.

..Respondents

THE HONOURABLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION NO.25078 OF 2004

ORDER

The petitioner's appointment as an Anganwadi worker is cancelled by the impugned order dated 15-12-2004, issued by the 4th respondent. This order is challenged in this writ petition.

The petitioner's case:

a. On the recommendation of the mothers' committee of Matlivaddepally village, Veeraballe Mandal, Kadapa district vide resolution dated 10-07-2004, the petitioner was appointed as the Anganwadi worker of the village by the 4th respondent's proceedings dated 16-07-2004. The petitioner joined the post on 17-07-2004.

b. By further order of the 4th respondent dated 17-07-2004 his earlier order dated 16-07-2004 was kept in abeyance. Aggrieved the petitioner represented to the 2nd respondent on 22-11-2004 seeking a direction from the said respondent to the 4th respondent to revoke the order dated 17-07-2004

c. The 2nd respondent directed the 4th respondent to admit the petitioner as an Anganwadi worker since she was already selected by the mothers' committee. Consequent on this direction, the 4th respondent by proceedings dated 24-11-2004 revoked the abeyance order and revived the order dated 16-07-2004 appointing the petitioner as an Anganwadi worker. The petitioner joined duty on 25-11-2004.

d. Surprisingly the impugned order is passed by the 4th respondent which reads as under:-

> "In pursuance of the orders of the Project Director, District Women and Chi9ld Development Agency Cuddapah vide reference Exp Memo No.797/A/04. The appointment order of Smt.Reddy Sailaja D/o V.Adiseshaiah, Metli Vaddapalli, Anganwadi Worker vide reference No.113/a/2004.05 dated 24-11-2004 is hereby cancelled with immediate effect as per complaints of the villagers and Sarpanch of the Metalibaddipalli village."

e. The impugned order is invalid as no reasons are recorded nor any notice or opportunity provided to the petitioner before the order. As the petitioner was appointed as per the rules and regulations and guidelines of the State Government and as there were no complaints regarding her work and conduct either from the public or the mothers' committee of the village, there is no justification for terminating her appointment.

The 3rd respondent-Project Director, District Women and Child Development Agency, Kadapa has filed a counter-affidavit apparently on behalf of the respondents 1 to 4. According to the 3rd respondent:

a. The 4th respondent is not the competent authority to issue appointment orders (for Anganwadi worker) in view of the Government Orders in G.O.Ms.No.48, dated 20-07-1998.

b. According to the orders in G.O.Ms.No.48, the I.C.D.S. Project Supervisor is the convener. He is required to convene a meeting of all the concerned at the habitation level including the specified members of the mothers of the surveyed children in relation to the Anganwadi center. Such meeting should be convened after due publicity by *tom tom,* pasting of a notice on the village chavadi, school and other important places and after inviting applications for the post, of Anganwadi worker. In such a duly convened meeting and after adequate publicity as prescribed for inviting applications, the members and mothers of the beneficiaries must select the Anganwadi worker. The appointment order should be issued by the mothers' committee by passing a resolution in the committee meeting.

c. The 4th respondent did not follow the due procedure; he never visited the village nor inquired in the village about the petitioner and no due publicity was given.

d. The petitioner is not a deserted woman but is living with her husband and children. The Sarpanch and villagers of village submitted a complaint that 4th respondent never visited the village nor was a meeting of the mothers' committee convened in the village. According to the complaint the petitioner and the 4th respondent called the mothers' committee members to the Project Headquarters and asked them to sign in a representation without their knowing the proposal to appoint the petitioner as an Anganwadi worker. The appointment of the petitioner is contrary to the Government orders in G.O.Ms.No;48 dated 20-07-1998, G.O.Ms.No.15, dated 16-04-2001 and G.O.Ms.No.20, dated 10-04-2003. By these orders the selection committees at district level were constituted for recruitment of Anganwadi workers. These orders also set out the procedure to be adopted for recruitment of Anganwadi workers. The petitioner’s

appointment is contrary to the procedure spelt out in the above G.Os. The Commissioner of Women Development and Child Welfare in a circular memo dated 09-02-2005 ordered that Anganwadi workers and Helpers must be selected from the same village whereby Anganwadi center is located and that the person selected should be accessible to the community.

e. From the 4th respondent's proceedings dated 16-07-2004, it is clear that the petitioner's appointment is of a purely temporary basis and terminable at any time without assigning any notice. The impugned order has been issued after thorough verification of the records, consideration of the complaints received from the Sarpanch and villagers and after approval of the 2nd respondent who is also a Chairman of the District Women Child Development Agency.

f. The 4th respondent (who issued proceedings dated 16-07-2004 appointing the petitioner in the first instance) was kept under suspension pending enquiry for violating Government orders and failing to follow the procedure for recruitment of Anganwadi worker.

The 5th respondent got herself impleaded in the writ petition pursuant to the orders of this Court dated 31-10-2005 in W.P.M.P.No.22448 of 2005, an application filed for impleadment in the writ petition. This respondent is the Sarpanch of Matlivaddepalli village. According to this respondent:

a. The petitioner's appointment is wholly illegal and contrary to the orders in G.O.Ms.No.48. According to G.O.Ms.No.48 the ICDS Supervisor, the designated Convener must convene a meeting with representatives of a local N.G.O, all the members of the local DWACRA-self help groups (the mothers of ICDS beneficiary children), elected women members of the Panchayat and the Sarpanch or Upa-Sarpanch of village as a special invitees and after giving due and wide publicity including by pasting a notice at the local school and other important places in the village notifying the vacancy and inviting applications for appointment of an Anganwadi worker.

b. The 4th respondent did not requisition the ICDS Supervisor to convene the selection committee meeting. There was no selection process in accordance with G.O.Ms.No.48.The 4th respondent arbitrarily picked up the petitioner for appointment without a selection process and without even visiting the village.

c. In view of the illegal and arbitrary conduct of the 4th respondent, this respondent and other villagers brought such serious irregularities to the notice of the 2nd respondent. The 2nd respondent in turn forwarded the complaint to the 3rd respondent directing the said respondent to inquire into the matter. The 3rd respondent inquired into the matter and found the complaints to be true. The 3rd respondent submitted his report to the 2nd respondent on which the 2nd respondent directed the 3rd respondent to cancel the appointment order of the petitioner as an Anganwadi worker.

d. The 4th respondent is placed under suspension by the Commissioner of Women Development and Child Welfare for grossly arbitrary and illegal conduct and violation of the procedures contemplated in G.O.Ms.No.14, in the matter of appointment of the petitioner as an Anganwadi worker. The petitioner was a beneficiary of the patently, illegal and unauthorized procedure adopted by the 4th respondent. Her initial appointment was illegitimate and therefore she is not entitled to claim any expectations or rights on the basis of such patently unauthorized order of appointment issued by the 4th respondent.

e. The post of Anganwadi worker is neither a Civil post, nor constitutes a service under the State nor is it a tenure post. The very order of appointment dated 16-07-2004 showed that the appointment was purely temporary and terminable without notice. The petitioner cannot therefore complain. No opportunity is required to be

given for termination of such appointment. The petitioner's very appointment as an Anganwadi worker being patently illegal, the impugned order terminating her from service suffers from no infirmity warranting interference.

The State Government issued orders in G.O.Ms.No.48, dated 20-07-1998 reconstituting the selection committee for recruitment of Anganwadi worker and Helpers. These orders were in supercession of the earlier orders in G.O.Ms.No.132 dated 20-08-1991. To the extent information is forthcoming, Anganwadi workers' appear to be appointments made pursuant to an administrative scheme for proving assistance to mal-nourished children and those belonging to poorer section in the village. According to G.O.Ms.No.48, the reconstituted selection committee comprises the ICDS Supervisor as the convener and a representative of the local NGO; all members of the local DWACRA-IGA-self help groups (the mothers of ICDS beneficiary children); elected women members of Panchayat as members and the Sarpanch or Upa-Sarpanch of the village as special invitees. G.O.Ms.No.48 also set out the procedure for appointment. According to this procedure, in every habitation the Presiding Officer or Supervisor will identify and prepare a list of N.G.Os, DWACRA-self help groups and Mahila groups and hold meeting to sensitize them on the ICDS programmes. The Supervisor of the relevant sector will facilitate a meeting of all concerned at the habitation level. The general body of the above mentioned groups and mothers of the surveyed children will be held and the Sarpanch or his nominee should be a special invitee. The Supervisor shall be present at the meeting and should facilitate the selection of the Anganwadi worker duly encouraging the participants to identify a local educated, daughter-in-law of the village. The G.O also provides that an Anganwadi worker so selected shall be liable to be removed by the general body meeting if her work is found unsatisfactory by the committee or grave irregularities are committed by her.

In a subsequent order of the State Government in G.O.Ms.No.15 certain modifications were issued to G.O.Ms.No.48. Detailed procedures have been prescribed in G.O.Ms.No.15 for convening of the selection committee for recruitment of Anganwadi workers duly specifying the composition of the mothers' committee,

reiterating the composition of the selection committee as specified in G.O.Ms.No.48 and that the Supervisor must be present in the selection committee meeting. By further orders in G.O.Ms.No.20 dated 10-04-2003 the State Government *inter alia* directed, that to ensure greater involvement of the stake holders in the functioning of the Anganwadi centers and in order to make the functioning of the mothers' committee more effectuate the method of recruitment prescribed in G.O.Ms.No.48, dated 28-07-1998 shall be followed and applicable for all ICDS Projects in the State. The Director, Women Development and Child Welfare was ordered to take necessary action and issue guidelines to the Project Director for effectuation of these orders. This is broadly the evolution of the scheme incorporating the substantive and procedural prescriptions for appointment of Anganwadi worker.

As apparent from the material on record in the writ petition, on 10-07-2004 a few women including one Nagaratnam styling herself as Chairman of the mothers' committee and one K.Sujatha describing herself as Secretary of the mothers' committee appear to have represented to the Child Welfare Officer of the village recommending the case of the petitioner for appointment as an Anganwadi worker on the ground that she hails from a poor family and had passed X class. This representation is projected to be a representation of the members and Chairman of the mothers' committee. The representation is that a resolution favouring the petitioner's appointment was passed. The 4th respondent thereupon, by an order dated 16-07-2004 appointed the petitioner as an Anganwadi worker terming the appointment as "*purely temporary and liable for termination at any time without disclosing any reasons*" . The references cited to the order dated 16-07-2004 mention the representation of the mothers' committee dated 10-07-2004 and some orders from the 2nd respondent's office dated 12-07-2004 apart from an application of the petitioner dated 07-07-2004.

From the record furnished to this Court by the 3rd respondent, it appears that 5th respondent-Sarpanch of the village made a complaint to the 3rd respondent with a copy marked to the 2nd respondent, that the petitioner was appointed as an Anganwadi worker without any information to the 5th respondent, without a committee meeting and contrary to the "rules". The 5th respondent requested the 3rd respondent to inquire into the matter and take appropriate action. Thereupon the 3rd respondent appears inquired into the whole issue of the petitioner's appointment

and sent up a report to the 2nd respondent. In the report the 3rd respondent stated that complaints were received from the Sarpanch and villagers against the 4th respondent regarding the appointment of the petitioner; that the 4th respondent did not follow the procedure prescribed in G.O.Ms.No.48, he never visited the village, did not inquire in the village or with the villagers about the petitioner that there were other eligible candidates in the village, that contrary to the statement of the 4th respondent the petitioner was not a deserted woman but was living with her husband and children and that the 4th respondent had called the members of the mothers' committee to the project headquarters and made them sign in a representation without any knowledge by them that it was regarding the petitioner's appointment. The report also stated that the 4th respondent must be considered as having committed grave irregularities and violation of orders in G.O.Ms.No.48. The report also stated that the villagers, the local Legislature and the Sarpanch were opposed to the appointment of the petitioner. On 09-12-2005 the District Collector-2nd respondent proposed cancellation of the orders (appointing the petitioner) and stated that the revised Government orders could be followed for making a fresh selection. Revised orders for appointment of Anganwadi workers were issued in G.O.Ms.No.28, dated 02-12-2004. As these orders are not relevant or material to the issues arising in this writ petition these need not be considered.

On 01-12-2005 the Director of Women Development and Child Welfare placed the then Child Development Project Officer, Akkireddypalli (the then holder of the office of the 4th respondent) under suspension pending enquiry in view of the grave irregularities.

As is apparent from the chronology of events, the several orders of the Government and the record of the case, the initial appointment of the petitioner as an Anganwadi worker by the 4th respondent's order dated 16-07-2004 was patently illegal and unauthorized. The convener of the selection committee was not involved in the process of selection. There was no selection committee convened in accordance with G.O.Ms.No.48. The Sarpanch of the village-5th respondent who is required to be notified of the selection process and is entitled to be present at the selection as a special invitee was not informed. The 4th respondent did not notify the vacancy or solicit any applications for filling up the vacancy of Anganwadi worker for

the village. Other eligible and available candidates in the village do not have even an inkling that an Anganwadi worker is to be recruited for the village. By a clandestine process, some members and office bearers purporting to be representing the mothers' committee recommended the petitioner's case to the 4th respondent and the 4th respondent issued the temporary appointment order dated 16-7-2004 without even visiting the village or inquiring from the villagers as to the suitability of the petitioner. This is a procedure evolved by the 4th respondent of her own, a procedure totally inconsistent with the procedure specified by the State Government, the sponsoring and administering authority of the scheme of appointment of Anganwadi worker.

On the aforesaid analysis, the very appointment of the petitioner as an Anganwadi worker is patently illegal, *void ab initio* and unenforceable. No legitimate expectations or rights can flow from such an extravagant and illegal exercise of non-existent power by the 4th respondent. As the petitioner's initial appointment as an Anganwadi worker is itself void and unenforceable, she is not entitled to claim invalidation of the impugned order terminating such appointment on the ground that it was issued without notice or opportunity to her. The petitioner has failed to establish any legal prejudice suffered by her in the invalidation of her clearly illegal appointment.

Natural justice is not a ritual and it is not enough to plead violation of natural justice without establishing the substantive prejudice suffered by a citizen by such violation. There is yet another reason to reject the writ petition. Mandamus is a discretionary remedy and will not issue to perpetuate an illegality or a public mischief. Even assuming that the impugned order ought not to have been issued without providing notice and opportunity to the petitioner to show-cause against the proposal for terminating her appointment as an Anganwadi worker, the effect of invalidating the impugned order on the ground of violation of principles of natural justice, is to revive and revitalize the 4th respondent's order dated 16-07-2004 appointing the petitioner as an Anganwadi worker. This Court has already concluded that the order of the 4th respondent dated 14-07-2004 is patently illegal and a void order.

In the circumstances and on the analysis above, no case is made out for exercise of the discretionary jurisdiction of this Court to issue an order in the nature

of mandamus, as sought by the petitioner.

For the aforesaid reasons the writ petition must fail and it is accordingly dismissed. The interim order of suspension (of the order impugned in the writ petition) granted by this Court on 31-12-2004 as extended from time to time shall stand dissolved. There shall be no order as to costs.

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GODA RAGHURAM,J

21st DECEMBER, 2005

***TSNR**